

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

DONNA HEMBY, as Administratrix of the  
Estate of WILLIAM HEMBY, deceased,

Plaintiff,

vs.

WATERWAYS TOWING & OFFSHORE  
SERVICES, INC. ("WATERWAYS"), DELTA  
MARINE SERVICE ("DELTA"), HENRY  
MARINE SERVICE ("HENRY") and INGRAM  
BARGE COMPANY ("INGRAM"),

Defendants.

CIVIL ACTION NO. 04-0729-P-B

ORDER

Currently pending before this court are three Motions to Lift Stay and Motions For Leave to Serve Crossclaim Complaint as to Defendant Henry Marine, each filed by defendants Delta (doc.70), Ingram (doc.72), and Waterways (doc.73). Henry filed a Response to the Motions (doc.79). Plaintiff has not filed a response. After careful consideration of the filings, the Motions to Lift Stay and For Leave to Serve Crossclaim Complaint as to Henry (docs.70, 72-73), are GRANTED.

On June 7, 2005, this court Ordered that plaintiff's action be Stayed as to Henry pending the outcome of Henry's bankruptcy proceeding,<sup>1</sup> with this action proceeding against the three other defendants, Waterways, Delta, and Ingram (doc.30).

On September 7, 2005, Henry filed a Notice of Filing of Order Confirming Amended Plan of Reorganization (doc.52). On September 8, 2005, this court noted the filing and set a deadline, September 22, 2005, for any response to the Notice (doc.53). On October 19, 2005, acting on plaintiff's Motions (doc.54, 59) and Delta's Response thereto (docs.56-57), this court directed that the Stay remain in place

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<sup>1</sup> Chapter 11 Petition pending in the United States Bankruptcy Court for the Southern District of Alabama, Case Number 04-12964-WWS-11.

(doc.62).

As noted above, defendants have each filed a Motion to Lift Stay and For Leave to Serve Crossclaim Complaint as to Henry. The Motions are similar and request the same relief.

Delta's Motion sets out that on November 22, 2005, the Bankruptcy Court granted its Motion to Modify Amended Plan of Reorganization of Henry, allowing Delta the right to file a crossclaim in the action sub judice for any insurance proceeds available to Henry (doc.70, see Exhibit A). Ingram's Motion states that on December 5, 2005, the Bankruptcy Court granted its Motion to Modify Amended Plan of Reorganization of Henry, allowing Ingram the right to file a crossclaim herein for any insurance proceeds available to Henry (doc.72, see Exhibit 1). Waterways' Motion is identical to that of Ingram (compare doc.73, with doc.72).

Delta, Ingram, and Waterways request the same relief from this court: 1) That the Stay as to Henry be lifted and that each be granted leave to file a crossclaim for any insurance proceeds available to Henry. Delta, Ingram, and Waterways each submitted their Crossclaim (doc.70, Ex.B; docs.72-73, Ex.2).

In response, Henry does not object to lifting the Stay, but requests that any lifting of the Stay "appl[y] only as to the proposed cross-claims... and solely for the purpose of allowing them to pursue those claims to the extent Henry... has insurance coverage for those claims, if any." (doc.79).

Accordingly, it is ORDERED that the Motions to Lift Stay and For Leave to Serve Crossclaim Complaint as to Henry (docs.70, 72-73), are hereby GRANTED.

The lifting of the Stay is for the purpose of allowing the proposed Crossclaims by Delta, Ingram, and Waterways, and for the sole purpose of allowing them to pursue their Crossclaims to the extent Henry has insurance coverage for those claims, if any.

In light of this ruling, Delta, Ingram, and Waterways are to E-file their Crossclaims, forthwith.

DONE this 24<sup>th</sup> day of January, 2006.

S/Virgil Pittman  
SENIOR UNITED STATES DISTRICT JUDGE